

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §114.7 and §114.64.

Background and Summary of the Factual Basis for the Proposed Rules

The Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) was established to enhance the objectives of the Vehicle Inspection and Maintenance Program (I/M). The 77th Texas Legislature, 2001, enacted House Bill (HB) 2134 to create the LIRAP to assist low income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. The 80th Texas Legislature, 2007, enacted HB 12 to make LIRAP assistance available for retirement of vehicles that are 10 years old or older. Beginning in March 2002, the TCEQ adopted rules in Chapter 114 as necessary to implement the LIRAP as codified under Texas Health and Safety Code (THSC), §§382.209 - 382.216, 382.218, and 382.219.

The LIRAP requirements specified in §114.64 and in THSC, §382.210 currently require replacement vehicles to be certified to meet federal Tier 2, Bin 5 or a cleaner Bin certification under Title 40 Code of Federal Regulations (CFR) §86.1811-04 in order to qualify for vehicle replacement assistance through the LIRAP. This tiered system refers to federal vehicle emission standards established by the United States Environmental Protection Agency (EPA). The EPA promulgated new rules to establish the Tier 3 Motor Vehicle Emission and Fuel Standards on April 28, 2014, under 40 CFR §86.1811-17. The Tier 3 emission standards are equivalent to or cleaner than the current Tier 2, Bin 5 emission standards. However, the Tier 3 rules are found in a different section in the CFR

than the Tier 2 rules. Therefore, the TCEQ rules need to be updated to reflect the most current federal Motor Vehicle Emission and Fuel Standards.

The Tier 3 emission standards will be phased in and replace the existing Tier 2 emission standards beginning with Model Year 2017 vehicles. This phase-in schedule requires 60% compliance of all covered vehicle classes by Model Year 2019, 80% compliance by Model Year 2021, and complete transition to the Tier 3 emission standards by Model Year 2022. Some automobile manufacturers have already certified certain Model Year 2016 vehicles to the new Tier 3 emissions standards earlier than required, which has proven problematic for the LIRAP. Because current rule language exclusively refers to Tier 2 emission standards, any vehicles certified to the Tier 3 emission standards are not eligible for purchase with LIRAP replacement assistance even though the engines are certified equivalent to or cleaner than the Tier 2, Bin 5 emission standards. This proposed rulemaking would amend the LIRAP rules in §114.7 and §114.64 to incorporate the Tier 3 emission standards into the program requirements as allowed under THSC, §382.210(c). If the Tier 3 emission standards are not incorporated into the LIRAP rule, then the number of vehicles eligible for purchase with LIRAP replacement assistance will be largely reduced beginning with Model Year 2017 and nearly depleted when the Tier 3 emission standards are fully implemented by Model Year 2022.

This proposed rulemaking would also amend the LIRAP rules in §114.64 to limit applicants to receive no more than \$600 in assistance annually per vehicle to make emissions-related repairs needed to pass the required annual emissions inspection. The

required annual emissions inspection is the emissions inspection test that must be performed and passed within 90 days of the vehicle's registration expiration date as a prerequisite for vehicle registration renewal. Repair assistance is intended to bring failing vehicles into compliance with emissions requirements.

Current rule language in §114.64(e) requires a repaired vehicle to pass a safety and emissions inspection retest before the recognized emissions repair facility is reimbursed by the local program administrator. This language also limits local program administrator discretion for payment to cases where the recognized emissions repair facility made repairs and the vehicle still did not pass a subsequent emissions inspection retest. However, local program administrators interpreted this discretion as allowing multiple repair assistance vouchers of up to \$600 per voucher for the same vehicle within one year as long as the applicant presented a failing inspection. The TCEQ issued guidance to the program administrators on August 3, 2015 stating that no more than \$600 in LIRAP funds may be used for emissions-related repairs per vehicle per year. Under this guidance, the local program administrators may only decide whether to reimburse the cost of the diagnosed emissions-related repairs up to \$600, not whether to issue an additional \$600 repair voucher to the applicant for subsequent repairs. This guidance was then issued to the participating recognized emissions repair facilities by the program administrators. The proposed amendment to §114.64 would reflect this guidance and clarify the annual limit on repair assistance.

Another clarifying change that is being proposed relates to the definition of "Engine." The

LIRAP rules allow participating dismantlers to salvage some parts for resale from the retired vehicles they receive through the LIRAP, but dismantlers are explicitly prohibited from selling the emissions control equipment and engines from retired vehicles. While the rule specifically defines the components of emissions control equipment, the definition of “Engine” does not have the same amount of detail. This proposed rulemaking would amend the LIRAP rules in §114.7 to revise the definition of “Engine” as needed to clarify which components of a vehicle retired through the LIRAP may not be sold by a dismantler after the vehicle’s retirement.

Section by Section Discussion

Subchapter A: Definitions

§114.7, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions

The commission proposes to amend §114.7 to revise definitions as needed for clarity and for consistency with the proposed revisions to Subchapter C. Specifically, the proposed amendment to §114.7(9) would more clearly define the term “Engine” to clarify the components that comprise the engine. The structure of the proposed definition would be consistent with the definition of “Emissions control equipment” specified in paragraph (8), which lists the components that must be destroyed through the LIRAP.

In addition, the commission proposes to amend §114.7(25) to revise the definition of “Replacement vehicle” to identify the Tier 3 emission standards, as codified in 40 CFR §86.1811-17, as an eligible engine certification for replacement vehicles purchased

through the LIRAP. The proposed revision would also remove the reference to the publication date of the Tier 2 emission standards in the *Federal Register* to allow the LIRAP rule to automatically incorporate future changes made to these emission standards by the EPA. The proposed revision does not include a reference to the *Federal Register* publication date of the Tier 3 emission standards for the same reason. The EPA has published changes to the Tier 3 rules in the *Federal Register* as recently as April 22, 2016, and may need to make additional technical revisions to the Tier 3 emission standards in the future to address issues occurring during the phase in period, i.e. Model Year 2017 through Model Year 2022. Allowing the LIRAP rules to incorporate future revisions to these federal rules ensures that the LIRAP requirements remain current with the federal certification standards they rely upon.

The commission also proposes to amend §114.7 to make non-substantive clarifying changes as needed for accuracy and consistency with the proposed changes to this subchapter.

Subchapter C: Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties
Division 2: Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program

§114.64, LIRAP Requirements

The commission proposes to amend §114.64 to incorporate the Tier 3 emission standards established under 40 CFR §86.1811-17 as an eligibility component for

replacement vehicles. The Tier 3 emission standards are set to replace the current Tier 2 emission standards beginning in Model Year 2017. Therefore, integrating the new federal Tier 3 emission standards into the LIRAP rule is necessary to maintain the overall functionality of the program. The tiered certification also serves as a determinant for the vehicle replacement compensation amount. Existing rule language allows up to \$3,000 in assistance for vehicles certified Tier 2, Bin 5 and Tier 2, Bin 4 and \$3,500 in assistance for vehicles certified at Tier 2, Bin 3 and cleaner Bins. The proposed rule language would reference the Tier 3 bin equivalents to determine the compensation amount for Tier 3 replacement vehicles. The proposed amendment to §114.64 would also remove the publication date of the Tier 2 emission standards in the *Federal Register* as needed for consistency with the proposed amendment to §114.7(25).

In addition, the commission proposes to amend §114.64 to specify that no more than \$600 in assistance may be granted annually per vehicle per applicant for emissions-related repairs to pass the required annual emissions inspection as needed to clarify the annual limit on repair assistance.

The commission also proposes to amend §114.64 to make non-substantive clarifying changes as needed for accuracy and consistency with the proposed changes to this subchapter and to conform to *Texas Register* style and formatting requirements.

Fiscal Note: Costs to State and Local Government

Maribel Montalvo, Analyst in the Chief Financial Officer's Division, determined that for

the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would clarify existing language and provide details for the LIRAP, authorized in THSC, §382.209. This rulemaking proposes amendments to Chapter 114.

First, the proposed amendments would revise the definition of “Engine” and specifically identify the components of a vehicle that may not be sold by a dismantler after a vehicle’s retirement. Currently, participating dismantlers are prohibited from selling the engine and emissions control equipment of retired LIRAP vehicles. However, while the definition of “Emissions control equipment” contains a list of specific parts, the definition of “Engine” does not. The proposed amendment would provide similar necessary detail.

Next, the proposed amendments would add a new federal standard, Tier 3 emission standards, to the definition of a LIRAP “Replacement vehicle.” Current LIRAP rules identify Tier 2 emission standards as a determinant for replacement vehicle eligibility. Tier 3 emission standards are equivalent to or cleaner than the Tier 2 emission standards. These new standards will gradually replace the existing Tier 2 emission standards, beginning with Model Year 2017. Federal or state legislative mandates do not require the acceptance of the new Tier 3 emission standards. However, it is necessary to add the new emission standards to the rule in order to ensure the continued viability of the LIRAP.

The proposed amendment to §114.64 would incorporate Tier 3 emission standards in the LIRAP requirements in order to maintain the eligible vehicle list as Tier 2 standards are phased out.

Finally, the proposed amendments would provide that an applicant may receive up to \$600 in LIRAP assistance toward emissions-related repair per vehicle per year. This proposed change is necessary to validate the maximum dollar amount of assistance available to the participant. The proposed rulemaking would not affect current fees or change any procedures currently in place.

The proposed rule changes do not create any new responsibilities or additional costs for the I/M Program or the program administrators. There are no expected cost savings for the participating counties that would result from the proposed rulemaking. The LIRAP is funded by fees paid by vehicle owners through the I/M Program. The proposed rule changes are administrative in nature and would not affect the fees collected through the I/M Program, or the funds allocated to LIRAP-participating counties.

These proposed amendments do not create any new responsibilities in enforcement or procedure for TCEQ staff. The proposed changes would not require new or additional funding to implement the rules. There is no expected cost saving implications for the commission as a result of the proposed rule amendments. Similarly, there is no expected impact on other state agencies.

Participation in the LIRAP is voluntary. LIRAP assistance is currently available in 16 counties: Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties in the Houston-Galveston-Brazoria area; Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties in the Dallas-Fort Worth area; and Travis and Williamson Counties. The LIRAP is administered in these counties either by a local council of governments or by the county.

Public Benefits and Costs

Ms. Montalvo also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be to maintain the objectives of the I/M Program by providing assistance to low income individuals with repairs, retrofits, replacement, or retirement of vehicles that fail emissions inspections. The I/M Program objectives are intended to reduce air pollution from motor vehicles and maintain compliance with the Federal Clean Air Act.

No fiscal implications are anticipated for businesses or individuals due to implementation or administration of the proposed rules. Participation in the LIRAP is voluntary for businesses and individuals.

The inclusion of vehicles certified under the Tier 3 emission standards ensures that recipients of LIRAP vehicle replacement assistance have a wide variety of eligible replacement vehicles available for purchase. When a replacement vehicle is to be purchased, LIRAP voucher recipients can select a vehicle from the current model year or

the three previous model years (two previous model years for trucks).

If the Tier 3 emission standards are not incorporated into the LIRAP requirements, the pool of eligible vehicles would quickly decline with 2017 and subsequent model years. There would be a limited number of eligible vehicles available for purchase through the LIRAP within the next five years, with full compliance of the Tier 3 emission standards required by 2022.

The proposed amendments would help maintain the number of eligible vehicles as federal certifications change, thus providing the public the option to replace older vehicles with the newest, cleaner emitting vehicles. The proposed amendment to the emission standards would not create costs for auto dealerships or individual applicants. Incorporating the Tier 3 emission standards would allow the LIRAP to continue to function and allow applicants to receive vehicle replacement assistance. Continuation of the program allows auto dealerships to market the newest models to potential recipients.

The proposed changes to the definition of “Engine” would not impose any new requirements or costs to the dismantlers who receive retired LIRAP vehicles. Similarly, this proposed change does not generate any cost savings for the participating dismantlers and would have no impact on individual applicants.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the

implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. Participation in the LIRAP is voluntary for any affected small or micro-businesses.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rulemaking does not meet the definition of a major environmental rule. Texas Government Code, §2001.0225 states that a major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, while the rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the proposed rulemaking does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the rulemaking is not designed to exceed any relevant standard set by federal law; 2) parts of the rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this rulemaking; and 4) the rulemaking is authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

Because the proposed rules place no involuntary requirements on the regulated community, the adopted rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public

health and safety of the state or a sector of the state. In addition, none of these proposed amendments place additional financial burdens on the regulated community.

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of these proposed rules is to amend sections of the Texas Administrative Code, which would incorporate the federal Tier 3 emission standards into the program requirements as allowed under THSC, §382.210(c) and limit LIRAP applicants to receive no more than \$600 in assistance annually per vehicle to make the emissions-related repairs needed to

pass the required annual emissions inspection. The proposed rules would substantially advance this stated purpose by amending sections in Chapter 114, Subchapters A and C to include revisions of the definitions, to include the federal Tier 3 emissions standards, and to specify the amount of LIRAP funds to be granted per vehicle per year.

Texas Government Code, §2007.003(b)(4) provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by state law. THSC, Chapter 382 requires the commission with the Texas Department of Public Safety to establish and authorize a commissioner's court of a participating county to implement a LIRAP subject to agency oversight. Additionally, Chapter 382 specifies that the commission shall adopt guidelines that recommend a minimum and maximum amount for repair assistance. Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4). Nevertheless, the commission further evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a “taking” under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking would not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In addition, because the subject proposed regulations do not provide more stringent requirements they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more

beyond that which would otherwise exist in the absence of the regulations. Therefore, these proposed rules would not constitute a taking under Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are editorial and procedural in nature and will not have a substantive effect on commission actions subject to the CMP and is, therefore, consistent with the CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

This rulemaking will not impact facilities with air emissions that have applicable (federal

or state) requirements with the Federal Operating Permit (30 TAC Chapter 122).

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on October 20, 2016, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

<http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-031-114-AI. The comment period closes on October 24, 2016.

Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Alison Stokes, Air Quality Planning Section, at (512) 239-2428.

SUBCHAPTER A: DEFINITIONS

§114.7

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC, and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state’s air and to control the quality of the state’s air. Finally, the amendment is proposed under THSC, §382.209, which establishes and authorizes the LIRAP; THSC, §382.210, which provides the implementation guidelines for the LIRAP; and THSC, §382.213, which outlines the requirements for disposition of retired vehicles.

The proposed amendment implements THSC, §§382.011, 382.017, 382.209, 382.210, and 382.213.

§114.7. Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this chapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter C, Division 2 of this chapter (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program) have the following meanings, unless the context clearly indicates otherwise.

(1) Affected county--A county with a motor vehicle emissions inspection and maintenance program established under Texas Transportation Code, §548.301.

(2) Automobile dealership--A business that regularly and actively buys, sells, or exchanges vehicles at an established and permanent location as defined under Texas Transportation Code, §503.301. The term includes a franchised motor vehicle dealer and an independent motor vehicle dealer.

(3) Car--A motor vehicle, other than a golf cart, truck or bus, designed or used primarily for the transportation of persons. A passenger van or sports utility vehicle may be considered a car under this section.

(4) Commercial vehicle--A vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(5) Destroyed--Crushed, shredded, scrapped, or otherwise dismantled to render a vehicle, vehicle's engine, or emission control components permanently and irreversibly incapable of functioning as originally intended.

(6) Dismantled--Extraction of parts, components, and accessories for use in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program or sold as used parts.

(7) Electric vehicle--A motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(8) Emissions control equipment--Relating to a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements). If the vehicle is so equipped, these include: exhaust gas recirculation system, power control module, catalytic converter, oxygen sensors, evaporative purge canister, positive crankcase ventilation valve, and gas cap.

(9) Engine--The fuel-based mechanical power source of a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements), which includes the crankcase, cylinder block, and cylinder head(s) and their initial internal components, the oil pan and cylinder head valve covers, and the intake and exhaust manifolds.

(10) Fleet vehicle--A motor vehicle operated as one of a group that consists of more than ten motor vehicles and that is owned and operated by a public or commercial entity or by a private entity other than a single household.

(11) Hybrid vehicle--A motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(12) LIRAP--Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

(13) LIRAP fee--The portion of the vehicle emissions inspection fee that is required to be remitted to the state at the time of annual vehicle registration, as authorized by Texas Health and Safety Code, §382.202, in counties participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

(14) LIRAP fee termination date--The first day of the month for the month that the Texas Department of Motor Vehicles issues registration notices without the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) fee, as defined in this section, in a participating county opting out of the LIRAP.

(15) LIRAP opt-out effective date--The date upon which a county that was participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) becomes a non-participating county, which occurs when the grant contract between the county and the executive director, established in §114.64(a) of this title (relating to LIRAP Requirements), is ended, but no earlier than the LIRAP fee termination effective date.

(16) Motor vehicle--A fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person, persons, or property on a public highway.

(17) Natural gas vehicle--A motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel.

(18) Non-participating county--An affected county that has either:

(A) not opted into the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) authorized by Texas Health and Safety Code, §382.209; or

(B) opted out of the LIRAP according to the procedures specified in §114.64(g) of this title (relating to LIRAP Requirements) and has been released from all

program requirements, including assessment of the LIRAP fee as defined in this section and participation in LIRAP grant programs.

(19) Participating county--An affected county in which the commissioners court by resolution has chosen to implement a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) authorized by Texas Health and Safety Code, §382.209. An affected county that is in the process of opting out of the LIRAP is considered a participating county until the LIRAP opt-out effective date as defined in this section.

(20) Proof of sale--A notice of sale or transfer filed with the Texas Department of Motor Vehicles [Transportation] as required under Texas Transportation Code, §503.005, or if unavailable, an affidavit from the selling dealer or documents approved by the commission.

(21) Proof of transfer--A TCEQ form that identifies the vehicle to be destroyed and tracks the transfer of the vehicle to the recycler from the participating county, automobile dealer, and dismantler.

(22) Qualifying motor vehicle--A motor vehicle that meets the requirements for replacement in §114.64 of this title (relating to LIRAP Requirements).

(23) Recognized emissions repair facility--An automotive repair facility as provided in 37 Texas Administrative Code §23.51 (relating to Vehicle Emissions Inspection Requirements).

(24) Recycled--Conversion of metal or other material into raw material products that have prepared grades; an existing or potential economic value; and using these raw material products in the production of new products.

(25) Replacement vehicle--A vehicle that is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04 or federal Tier 3, Bin 160 or cleaner Bin certification under 40 Code of Federal Regulations (CFR) §86.1811-17 [, as published in the February 10, 2000, Federal Register]; has a gross vehicle weight rating of less than 10,000 pounds; have an odometer reading of not more than 70,000 miles; the total cost does not exceed \$35,000 and up to \$45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2, Bin 3 or cleaner Bin certification under 40 CFR [Code of Federal Regulations] §86.1811-04 or federal Tier 3, Bin 85 or cleaner Bin certification under 40 CFR §86.1811-17 [, as published in the February 10, 2000, issue of the Federal Register (65 FR 6698)]; has passed a Texas Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(26) Retrofit--To equip, or the equipping of, an engine or an exhaust or fuel system with new, emissions-reducing parts or equipment designed to reduce air emissions and improve air quality, after the manufacture of the original engine or exhaust or fuel system, so long as the parts or equipment allow the vehicle to meet or exceed state and federal air emissions reduction standards.

(27) Retrofit equipment--Emissions-reducing equipment designed to reduce air emissions and improve air quality that is approved by the United States Environmental Protection Agency and is installed after the manufacture of the original engine, exhaust, or fuel system.

(28) Total cost--The total amount of money paid or to be paid for the purchase of a motor vehicle as set forth as the sales price in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Motor Vehicles [Transportation]. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as the sales price on the application for Texas Certificate of Title if that form were used.

(29) Truck--A motor vehicle having a gross vehicle weight rating of less than 10,000 pounds and designed primarily for the transport of persons and cargo.

(30) Vehicle--A motor vehicle subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(31) Vehicle owner--For the purposes of repair assistance or retrofit, the person who holds the Certificate of Title for the vehicle and/or the operator who is granted possession and is authorized to make repairs under a lease or purchase agreement; and for the purposes of accelerated retirement, the person who holds the Certificate of Title for the vehicle.

(32) Vehicle retirement facility--A facility that, at a minimum, is licensed, certified, or otherwise authorized by the Texas Department of Motor Vehicles [Transportation] to destroy, recycle, or dismantle vehicles.

**SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE
REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT
PROGRAM; AND EARLY ACTION COMPACT COUNTIES
DIVISION 2: LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND
ACCELERATED VEHICLE RETIREMENT PROGRAM**

§114.64

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC, and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air. Finally, this rulemaking is proposed under THSC, §382.209, which establishes and authorizes the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; THSC, §382.210, which provides the implementation guidelines for the LIRAP; and THSC, §382.213, which outlines the requirements for disposition of retired vehicles.

The proposed amendment implements THSC, §§382.011, 382.017, 382.209, 382.210, and 382.213.

§114.64. LIRAP Requirements.

(a) Implementation. Participation in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) is voluntary. An affected county may choose to participate in the program at its discretion. Upon receiving a written request to participate in the LIRAP by a county commissioner's court, the executive director shall authorize the implementation of a LIRAP in the requesting county. The executive director and county shall enter into a grant contract for the implementation of the LIRAP.

(1) The grant contract must provide conditions, requirements, and projected funding allowances for the implementation of the LIRAP.

(2) A participating county may contract with an entity approved by the executive director for services necessary to implement the LIRAP. A participating county or its designated entity shall demonstrate to the executive director that, at a minimum, the county or its designated entity has provided for appropriate measures for determining applicant eligibility and repair effectiveness and ensuring against fraud.

(3) The participating county shall remain the contracted entity even if the county contracts with another county or another entity approved by the executive director to administer the LIRAP.

(b) Repair and retrofit assistance. A LIRAP must provide for monetary or other compensatory assistance to eligible vehicle owners for repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements or for installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed to bring a vehicle into compliance with emissions requirements. Vehicles under the LIRAP must be repaired or retrofitted at a recognized emissions repair facility. To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(1) the vehicle has failed a [vehicle] required emissions test within 30 days of application submittal;

(2) the vehicle can be driven under its own power to the emissions inspection station or vehicle retirement facility;

(3) the vehicle is currently registered in and has been registered in the participating program county for at least 12 of the 15 months immediately preceding the application for assistance;

(4) the vehicle has passed the safety portion of the Texas Department of Public Safety (DPS) motor vehicle safety and emissions inspection as recorded in the Vehicle Inspection Report [(VIR)], or provide assurance that actions will be taken to bring the vehicle into compliance with safety requirements;

(5) the vehicle owner's net family income is at or below 300% of the federal poverty level; and

(6) any other requirements of the participating county or the executive director are met.

(c) Accelerated vehicle retirement. A LIRAP must provide monetary or other compensatory assistance to eligible vehicle owners to be used toward the purchase of a replacement vehicle.

(1) To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(A) the vehicle meets the requirements under subsection (b)(1) - (3) and (5) of this section;

(B) the vehicle has passed a DPS motor vehicle safety or safety and emissions inspection within 15 months prior to application submittal; and

(C) any other requirements of the participating county or the executive director are met.

(2) Eligible vehicle owners of pre-1996 model year vehicles that pass the required United States Environmental Protection Agency (EPA) Start-Up Acceleration Simulation Mode (ASM) standards emissions test, but would have failed the EPA Final ASM standards emissions test, or some other criteria determined by the commission, may be eligible for accelerated vehicle retirement and replacement compensation under this section.

(3) Notwithstanding the vehicle requirement provided under subsection (b)(1) of this section, an eligible vehicle owner of a vehicle that is gasoline powered and is at least 10 years old as determined from the current calendar year (i.e., 2010 minus 10 years equals 2000) and meets the requirements under subsection (b)(2), (3), and (5) of this section, may be eligible for accelerated vehicle retirement and compensation.

(4) Replacement vehicles must:

(A) be in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations (CFR) §86.1811-04 or federal Tier 3, Bin 160 or cleaner Bin certification under 40 CFR §86.1811-17 [, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698)];

(B) have a gross vehicle weight rating of less than 10,000 pounds;

(C) have an odometer reading of not more than 70,000 miles;

(D) be a vehicle, the total cost of which does not exceed \$35,000 or [and] up to \$45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2, Bin 3 or cleaner Bin certification under 40 CFR [Code of Federal Regulations] §86.1811-04 or federal Tier 3, Bin 85 or cleaner Bin certification under 40 CFR §86.1811-17 [, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698)];
and

(E) have passed a DPS motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(d) Compensation. The participating county shall determine eligibility and approve or deny the application promptly. If the requirements of subsection (b) or (c) of this

section are met and based on available funding, the county shall authorize monetary or other compensations to the eligible vehicle owner.

(1) Compensations must be:

(A) no more than \$600 and no less than \$30 per vehicle annually to be used for emission-related repairs or retrofits performed at recognized emissions repair facilities, including diagnostics tests performed on the vehicle; or

(B) based on vehicle type and model year of a replacement vehicle for the accelerated retirement of a vehicle meeting the requirements under this subsection. Only one retirement compensation can be used toward one replacement vehicle annually per applicant. The maximum amount toward a replacement vehicle must not exceed:

(i) \$3,000 for a replacement car of the current model year or previous three model years, except as provided by clause (iii) of this subparagraph;

(ii) \$3,000 for a replacement truck of the current model year or the previous two model years, except as provided by clause (iii) of this subparagraph; and

(iii) \$3,500 for a replacement hybrid, electric, natural gas, and federal Tier 2, Bin 3 or cleaner Bin certification under 40 CFR [Code of Federal Regulations] §86.1811-04 or federal Tier 3, Bin 85 or cleaner Bin certification under 40

CFR §86.1811-17 [, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698)] vehicle of the current model year or the three previous model years.

(2) Vehicle owners shall be responsible for paying the first \$30 of emission-related repairs or retrofit costs that may include diagnostics tests performed on the vehicle.

(3) For accelerated vehicle retirement, provided that the compensation levels in paragraph (1)(B) of this subsection are met and minimum eligibility requirements under subsection (c) of this section are met, a participating county may set a specific level of compensation or implement a level of compensation schedule that allows flexibility. The following criteria may be used for determining the amount of financial assistance:

(A) model year of the vehicle;

(B) miles registered on the vehicle's odometer;

(C) fair market value of the vehicle;

(D) estimated cost of emission-related repairs necessary to bring the vehicle into compliance with emission standards;

(E) amount of money the vehicle owner has already spent to bring the vehicle into compliance, excluding the cost of the vehicle emissions inspection; and

(F) vehicle owner's income.

(e) Reimbursement for repairs and retrofits. A participating county shall reimburse the appropriate recognized emissions repair facility for approved repairs and retrofits within 30 calendar days of receiving an invoice that meets the requirements of the county or designated entity. Repaired or retrofitted vehicles must pass a DPS safety and emissions inspection before the recognized emissions repair facility is reimbursed. In the event that the vehicle does not pass the emissions retest after diagnosed repairs are performed, the participating county has the discretion, on a case-by-case basis, to make payment for diagnosed emissions repair work performed.

(f) Reimbursements for replacements. A participating county shall ensure that funds are transferred to a participating automobile dealership no later than 10 business days after the county receives proof of the sale, proof of transfer to a dismantler, and any administrative documents that meet the requirements of the county or designated entity. A list of all administrative documents must be included in the agreements that are entered into by the county or designated entity and the participating automobile dealerships.

(1) A participating county shall provide an electronic means for distributing replacement funds to a participating automobile dealership once all program criteria have been met. The replacement funds may be used as a down payment toward the purchase of a replacement vehicle. Participating automobile dealers shall be located in the State of Texas. Participation in the LIRAP by an automobile dealer is voluntary.

(2) Participating counties shall develop a document for confirming a person's eligibility for purchasing a replacement vehicle and for tracking such purchase.

(A) The document must include at a minimum, the full name of applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the program administrator's contact information, and the amount of money available to the participating vehicle owner.

(B) The document must be presented to a participating dealer by the person seeking to purchase a replacement vehicle before entering into negotiations for a replacement vehicle.

(C) A participating dealer who relies on the document issued by the participating county has no duty to confirm the eligibility of the person purchasing a replacement vehicle in the manner provided by this section.

(g) Opting out of the LIRAP. Participation in the LIRAP is voluntary. A participating county may opt out of the program. Procedures to release a participating county from the LIRAP shall be initiated upon the receipt of a written request to the executive director by the county commissioner's court in a participating county.

(1) A written request to opt out of the LIRAP shall request release from the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions) and the grant contract established in subsection (a) of this section. The written request shall include one of the following possible LIRAP opt-out effective dates as defined in §114.7 of this title:

(A) the LIRAP fee termination effective date as defined in §114.7 of this title; or

(B) the last day of the legislative biennium in which the LIRAP fee termination effective date as defined in §114.7 of this title occurred.

(2) Upon receipt of a written request to be released from participation in the LIRAP, the executive director shall notify, in writing, with a copy sent to the requesting county, the Texas Department of Motor Vehicles [(DMV)], DPS, and the Legislative Budget Board of Texas that the LIRAP fee should no longer be collected for vehicles undergoing inspection and registration in the affected county.

(3) A county opting out of the LIRAP remains a participating county until the LIRAP opt-out effective date as defined in §114.7 of this title, on which date the county is no longer subject to the LIRAP fee, and the grant contract established in subsection (a) of this section is ended. Not more than 90 days after a county's LIRAP opt-out effective date, the unspent balance of allocated LIRAP funds for that county will be returned to the commission unless the county opting out has entered into an official inter-county elective agreement with other participating counties in the same region to share allocated LIRAP funds. If the county opting out has entered into an official inter-county elective agreement with other participating counties in the same region to share allocated LIRAP funds, then the portion of LIRAP allocations that is shared and unspent as of the LIRAP opt-out effective date will be redistributed among the remaining participating counties that are part of that agreement. This redistribution of funds will occur not more than 90 days after a county's LIRAP opt-out effective date.